

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ANDREW S. ANDERSON,

No. C 12-5297 YGR (PR)

Plaintiff,

**ORDER DENYING DEFENDANTS'  
MOTION TO DISMISS WITHOUT  
PREJUDICE**

v.

W. J. WILSON, et al.,

Defendants.

This is a federal civil rights action. Defendants' motion to dismiss (Docket No. 16) -- on grounds that Plaintiff failed to exhaust his administrative remedies and failed to allege facts sufficient to establish the elements of any of his state law claims -- is DENIED without prejudice. Defendants' grounds for dismissal are more properly raised in a motion for summary judgment. No later than **sixty (60) days** of this Order, Defendants must renew their arguments in support of dismissal by way of a summary judgment motion, in light of the Ninth Circuit's recent ruling in *Albino v. Baca*, No. 10-55702, slip op. at 4 (9th Cir. Apr. 3, 2014) (en banc). The motion need raise only the issue of nonexhaustion, or other procedural concerns. If the motion is denied, Defendants can file a summary judgment motion addressing the merits of Plaintiff's claims.

Plaintiff shall file any opposition to Defendants' motion within **twenty-eight (28) days** of the date the motion is filed. Defendants shall file a reply within **fourteen (14) days** of the date the opposition is filed. Defendants are reminded that a motion for summary judgment also must be accompanied by a *Rand* notice so that Plaintiff will have fair, timely and adequate notice of what is required of him in order to oppose the motion. *Woods v. Carey*, 684 F.3d 934, 939 (9th Cir. 2012) (notice requirement set out in *Rand v. Rowland*, 154 F.3d 952 (9th Cir. 1998), must be served concurrently with motion for summary judgment).

The Clerk of the Court is directed to terminate Docket No. 16.

IT IS SO ORDERED.

DATED: April 17, 2014

  
YVONNE GONZALEZ ROGERS  
UNITED STATES DISTRICT COURT JUDGE